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## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. CUSTOMS AND BORDER PROTECTION**

#### **National Customs Automation Program (NCAP) Test Concerning Electronic Filing of Protests in the Automated Commercial Environment (ACE)**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test to assess new functionalities related to the electronic filing and processing of protests and new notification procedures for protests filed electronically in the Automated Commercial Environment (ACE). During the test, participants will be able to submit additional arguments and supporting information electronically, with their electronic protest in ACE. In addition, participants will be able to submit requests for further review, requests for accelerated disposition, requests to set aside denial of further review, and requests to void denial of a protest electronically in ACE. This notice also announces the testing of electronic protest status notifications from CBP. The test will be known as the ACE Protest Test.

**DATES:** The ACE Protest Test will commence on August 29, 2016, and will continue until concluded by a notice published in the **Federal Register**. Comments concerning this notice and any aspect of the test may be submitted at any time during the test to the address set forth below.

**ADDRESSES:** Comments concerning this notice and any aspect of the ACE Protest Test may be submitted at any time during the testing period via email to Josephine Baiamonte, ACE Business Office (ABO), Office of Trade at [josephine.baiamonte@cbp.dhs.gov](mailto:josephine.baiamonte@cbp.dhs.gov). In the subject line of your email, please indicate, “Comment on ACE Protest Test FRN.”

**FOR FURTHER INFORMATION CONTACT:** For technical questions related to the application or requests for an ACE Portal Account, including ACE Protest Filer Accounts, contact the ACE Account Service Desk by calling 1-866-530-4172, selecting option 1, then option 2, or by emailing [ACE.Support@cbp.dhs.gov](mailto:ACE.Support@cbp.dhs.gov) for assistance.

**SUPPLEMENTARY INFORMATION:**

**I. The National Customs Automation Program**

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement Implementation Act (Customs Modernization Act) (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and

Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality.

Sections 514 and 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1515), provide procedures for protesting certain decisions made by CBP. Section 645 of the Customs Modernization Act amended section 514(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(1)) to permit the transmission of such protests to CBP electronically. The CBP regulations governing protests are found in part 174 of Title 19 of the Code of Federal Regulations (19 CFR part 174).

## **II. Authorization for the ACE Protest Test**

The Customs Modernization Act authorizes the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The ACE Protest Test is authorized pursuant to 19 CFR 101.9(b) which provides for the testing of NCAP programs or procedures. See Treasury Decision (T.D.) 95-21.

## **III. Electronic Protest Program**

### **A. ACS Protest Filing**

The electronic filing and status of protests is a planned component of the NCAP, authorized by section 411 of the Tariff Act of 1930, as amended by section 631 of the

Customs Modernization Act. See 19 U.S.C. 1411(a)(2)(A). The U.S. Customs Service, the legacy agency of CBP, previously tested and deployed electronic protest filing using the Automated Broker Interface (ABI) to transmit a protest to ACS. See, e.g., 65 FR 39224 (June 23, 2000).

On January 14, 2011, CBP published a Final Rule in the **Federal Register** (76 FR 2573) making technical corrections to the protest regulations in 19 CFR part 174 and related provisions in Title 19 of the CFR. The rule amended section 174.12(b) to conform to section 514(c)(1) of the Tariff Act of 1930, as modified by the Customs Modernization Act, allowing a protest to be transmitted electronically to the electronic data interchange system authorized by CBP for that purpose.

#### B. ACE Protest

CBP has developed the ACE Protest Module to replace electronic protest filing in ACS. The ACE Protest Module is an internet-based processing module, which allows any person with a Protest Filer Account in the ACE Portal to file a protest and supporting documentation electronically, monitor the status of the filer's electronic protest, and receive CBP notifications and messages regarding the protest. CBP has modified the ACE Portal Account Test to establish the Protest Filer Account. See 81 FR 52453 (August 8, 2016). Parties wishing to file an electronic protest will need to establish and maintain an ACE Portal Account, as specified in that notice.

In addition, on July 28, 2016, CBP published a notice in the **Federal Register** announcing that the ACE Protest Module will be the sole electronic method authorized

by the Commissioner of CBP for filing electronic protests. See 81 FR 49685 (July 28, 2016). That notice also announced that CBP will no longer accept protests filed through ABI to ACS. Upon the effective date of that notice, ACE will replace ACS as the authorized electronic data interchange system for filing protests electronically. Pursuant to 19 CFR 174.12(b), protest filers are authorized to transmit their protest electronically to ACE.

#### **IV. Test Participation Criteria**

CBP is conducting a test of the ACE Protest Module, to assess new functionalities related to the electronic filing and processing of protests and new notification procedures for protests filed electronically in ACE. Any party who wishes to participate in this test may do so as long as it has a Protest Filer Account. Participation in this test is not confidential information and CBP may disclose the name(s) of participants. When a participant in the ACE Protest Test files a protest in ACE, the entire protest process will be fully automated and must be completed in ACE, with the exception of a request for accelerated disposition, which must be sent by registered or certified mail as required under 19 U.S.C. 1515(b). Once a test participant files a protest as part of this test, the protest filer agrees to the test procedures below for all subsequent actions regarding the protest. For test participants, CBP will waive certain regulations pertaining to protest filing, as described below. Except where otherwise specified by this notice, the CBP regulations concerning the filing of a protest remain the same.

#### A. Power of Attorney and Certification

The regulations governing the ability to file a protest on behalf of another person are codified at 19 CFR 174.3. For participants in the ACE Protest Test, rather than submitting a power of attorney, the protest filer will be required to check a box affirming the following statement:

I certify that I am authorized to file this protest, that such authority has been granted by a duly and properly executed Power of Attorney where one is required, that all the information, statements and assertions herein are true and correct to the best of my knowledge and belief, and that this protest complies with all applicable regulations.

A protest filer will not be able to submit a protest electronically unless the box next to the certification statement is checked. The protest filer must maintain a copy of the power of attorney to provide to CBP upon request.

#### B. Identity of Filer

The CBP regulations require that a protest include the name of the person filing the protest, or his agent or attorney. See 19 CFR 174.12(c). Participants in the ACE Protest Test should identify the person filing the protest through the Protest Filer Account. Information identifying the filer of the protest, as required by section 174.12(c), will be collected at the time the protest filer establishes an account. In addition, the Protest Filer will be required to enter the capacity in which it is filing, by selecting a “filer type” (e.g., attorney, broker, importer/consignee, or surety).

#### C. Place of Filing

The CBP regulations require a protest to be filed with the port director whose decision is being protested. See 19 CFR 174.12(d). Delegation Order Number 14-004, effective on September 11, 2014, delegates concurrent trade authority to the port directors

and the directors of the Centers of Excellence & Expertise (CEE). As a result, a protest may be submitted to either the port director or the director of the filer's assigned CEE. For participants in the ACE Protest Test, electronic protests will be filed in the ACE Protest Module instead. Protests filed electronically through the module will be routed to the CBP port, CEE, or other office responsible for the decision that is the subject of the protest.

D. Date of Filing

The CBP regulations state that the date of filing of a protest is the date on which the protest is received by the Customs officer with whom it is required to be filed. See 19 CFR 174.12(f). For electronic filings, the date of filing for claims or information (including a protest, protest amendment, request to set aside denial of further review, and request to void denial of a protest) will be the date on which the protest is received by the ACE Protest Module. The date of filing in the ACE Protest Module will be determined based on midnight Eastern Standard Time (EST). This means that, to be considered timely, an electronic filing in the ACE Protest Module must be received by 11:59 p.m. (EST) on the final day of the filing period. The protest filer and any other designated parties will receive an electronic message confirming receipt of a protest filing in ACE.

E. Amendment of Protests

The Protest Filer may amend an electronic protest according to the requirements set forth in section 174.14. As required under 19 CFR 174.14(b), when a Protest Filer files a protest electronically, any amendment to such protest must be made electronically

through the ACE Protest Module. As a result, for participants in the ACE Protest Test, the place of filing of an amendment to a protest filed in ACE will be the ACE Protest Module, rather than the port director with whom the protest was filed. See 19 CFR 174.14(e). The date of filing of an amendment to an ACE Protest will be the date on which the protest amendment is received by the ACE Protest Module. The date of filing in the ACE Protest Module will be determined by the time of receipt of the amendment in ACE based on midnight Eastern Standard Time. The Protest Filer and any other designated parties will receive an electronic message confirming receipt of an amendment made to an electronic protest.

F. Accelerated Disposition

Under 19 U.S.C. 1515(b), a request for accelerated disposition must be sent by registered or certified mail. If the Protest Filer intends to request accelerated disposition for a protest, the request must be sent by registered or certified mail to the port director or other CBP officer whose decision is protested. See 19 CFR 174.12(d) and 174.22(a). Test participants are also required to check a box in the ACE Protest Module indicating a request was properly mailed. When making a request for accelerated disposition the Protest Filer must check a box affirming that the Protest Filer has filed the request for accelerated disposition by registered or certified mail:

I certify that I have sent a request for Accelerated Disposition by Certified or Registered United States Mail, and I understand that by requesting accelerated disposition this protest will be deemed denied within 30 days of the request if it is not decided by CBP before the end of the 30 day period, and that any lawsuit filed in the United States Court of International Trade contesting the deemed denial of this protest is barred unless commenced within 180 days of the date of the deemed denial.



The date of the request for accelerated disposition will be based on the date of the mailing. The Protest Filer may electronically withdraw a request for accelerated disposition of a protest filed through the ACE Protest Module any time prior to the 30 days after the date of the request or the CBP decision on the protest, whichever comes first.

G. Further Review

In lieu of filing an application for further review (AFR) on Customs Form 19, pursuant to 19 CFR 174.25, test participants may submit an AFR concurrently with the protest in the ACE Protest Module. When a protest is filed through the ACE Protest Module, the Protest Filer must use the module to submit the AFR. When a Protest Filer applies for further review, the filer must check a box to answer “yes” or “no” to the following questions:

Have you made prior request of a port director for a further review of the same claim with respect to the same or substantially similar merchandise?

Have you received a final adverse decision from the U.S. Court of International Trade on the same claim with respect to the same category of merchandise or do you have an action involving such a claim pending before the U.S. Court of International Trade?

Have you previously received an adverse administrative decision from the Commissioner of CBP or his designee or have you presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise?

The ACE Protest Module will not accept a protest with an AFR unless the Protest Filer answers these three questions and provides a written justification. The written justification must be entered in the text box provided or uploaded separately.

#### H. Additional Arguments

A reviewing officer may consider alternative claims and additional grounds or arguments submitted by the protesting party. See 19 CFR 174.28. For purposes of the ACE Protest Test, participants may use the ACE Protest Module to submit alternative claims and additional grounds or arguments any time prior to the disposition of the protest. When a protest is filed through the ACE Protest Module, the Protest Filer must use the module to submit additional arguments unless such information is incapable of electronic submission, e.g., samples of imported merchandise.

#### I. Submission of Additional Information and Protest Withdrawal

When a protest is filed through the ACE Protest Module, the Protest Filer must use the module to submit additional information requested by CBP unless such information is incapable of electronic submission, e.g., samples of imported merchandise. Any request to withdraw a protest submitted through the ACE Protest Module must be submitted electronically through the module.

#### J. Request to Set Aside Denial of Further Review

A Protest Filer seeking to file a request to set aside CBP's denial of further review under 19 U.S.C. 1515(c) must use the ACE Protest Module when the underlying protest was filed through the ACE Protest Module. A request will be considered filed with the appropriate CBP officer if it is filed in the ACE Protest Module within 60 days after the date of the protest denial. As noted above, the date of filing in the ACE Protest Module will be determined by the time of receipt of the request for setting aside of the denial of

further review in ACE based on midnight Eastern Standard Time. If CBP fails to act on the request to set aside the denial of further review within 60 days from the time of filing, the request will be considered denied and the Protest Filer will receive a courtesy electronic notification.

K. Request to Void Denial of a Protest

A Protest Filer seeking to file a request to void the denial of a protest under 19 U.S.C. 1515(d) must use the ACE Protest Module when the underlying protest was filed through the ACE Protest Module. A request will be considered filed with the appropriate CBP office if it is filed in the ACE Protest Module within 90 days after the date of the protest denial. The date of filing of a request will be the date on which the request is received by the ACE Protest Module. As noted above, the date of filing in the ACE Protest Module will be determined by the time of receipt of the request in ACE based on midnight Eastern Standard Time.

L. Messaging

ACE will generate and send automated messages to notify the Protest Filer and any other designated parties of changes in the status of the protest and decisions made by CBP regarding the protest. These messages will advise the parties when CBP has received the: protest; request for accelerated disposition; additional arguments; application for further review; protest amendment; request to set aside denial of further review; request to withdraw a protest; or request to void the denial of a protest. In

addition, rather than mailing a notice of denial of the protest pursuant to 19 CFR 174.30, for protests filed electronically, ACE will notify designated parties of actions taken by CBP electronically, including CBP's decision to suspend, grant, or deny a protest.

## **V. Comments**

All interested parties are invited to comment on any aspect of this ACE Protest Test for the duration of the test. CBP requests comments and feedback on all aspects of this test in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this test.

## **VII. Development of ACE Prototypes**

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).

- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).

- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).

- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency Message Set through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).



- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).
- Modification of the National Customs Automation Program Test Concerning the Automated Commercial Environment Portal Account to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program Test Concerning the Automated Commercial Environment Partner Government Agency Message Set Regarding the Toxic Substances Control Act Certification Required by the Environmental Protection Agency: 81 FR 7133 (February 10, 2016).

- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings: 81 FR 10264 (February 29, 2016).
- Modification of the National Customs Automation Program (NCAP) Tests Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA): 81 FR 13399 (March 14, 2016).
- Cessation of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 81 FR 18634 (March 31, 2016).
- Automated Commercial Environment (ACE); Announcement of National Customs Automation Program Test of the In-Transit Manifest Pilot Program: 81 FR 24837 (April 27, 2016).
- Announcement of National Customs Automation Program (NCAP) Test Concerning the Submission Through the Automated Commercial Environment (ACE) of Certain Import Data and Documents Required by the U.S. Fish and Wildlife Service: 81 FR 27149 (May 5, 2015).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings Accompanied by Food and Drug Administration (FDA) Data: 81 FR 30320 (May 16, 2016).

- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Entry and Entry Summary Filings: 81 FR 32339 (May 23, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) Protest Module as the Sole CBP-Authorized Method for Filing Electronic Protests: 81 FR 49685 (July 28, 2016).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Accounts to Establish the Protest Filer Account and Clarification that the Terms and Conditions for Account Access Apply to All ACE Portal Accounts: 81 FR 52453 (August 8, 2016).

Dated: August 9, 2016

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Brenda B. Smith  
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Office of Trade

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